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Federal Defender Services
of Wisconsin, Inc.

OUT FRONT

This edition of *Doing Time Times* ends with an article on prisoner recovery programs (See, Scoles, Sara, “Life After Incarceration: Successfully Reentering Society”.) The movement to expand prisoner reentry programs is getting a boost in Congress. Congressional leaders from both parties are co-sponsoring the “Second Chance Act.” The purpose of the Act is to provide federal grants for “mentoring organizations” and state or local governments to establish post-release housing options for ex-offenders. Funding also would support collaborations between corrections institutions and community colleges or technical schools to teach practical job skills to prisoners in pre-release and post-release stages.

One of the Act’s sponsors, Rep. Danny Davis (D-Ill), has spoken about the need to change the laws that hinder reintegration efforts. He’s right on the mark. A recently published resource guide describing federal and state laws affecting restoration of ex-offender civil rights, notes that such laws often place counterproductive burdens on ex-offender efforts to make a fresh start: “While every jurisdiction provides at least one way that a criminal offender can avoid or mitigate the collateral penalties and disabilities associated with a conviction, in most jurisdictions this relief mechanism is inaccessible or unreliable.”¹

¹Margaret Colgate Love, “*Relief From Collateral Consequences O A Conviction:: A State-By-State Resource Guide*” (2006).

Federal law may be the worst example: there simply is no federal prohibition against job discrimination based on convictions.² Looking at state jurisdictions in the upper Midwest, the range of protections against such job discrimination is very uneven. Iowa and Indiana have no general prohibitions and Illinois bans discrimination based on conviction only if the jobseeker has been issued a certificate of rehabilitation, or court records have been expunged or sealed.

Minnesota prohibits job discrimination by public employers based on conviction unless there is a “direct relationship” between the job position and the conviction history. So Minnesota requires that government employers not discriminate, unless the purpose of the job and the crimes committed affect the jobseeker’s fitness to do the job and he/she has not shown sufficient rehabilitation or present fitness to do the job. Rehabilitation can be shown by a record of law-abiding conduct for one year after release, or by successful completion of probation or parole.

²Federal and state laws are in place, however, to protect against racially-based job discrimination, if it can be established independent of a jobseeker’s conviction record.

Wisconsin has a broad ban on job discrimination based on a person’s criminal record. But there are exceptions. Discrimination based on a record of convictions is lawful if the circumstances of the crimes of conviction “substantially relate” to the particular job or licensed occupation. Further, job licenses may not to be issued for specified occupations (e.g., security guards) if the offender has not been pardoned or he/she has been convicted of specified crimes (e.g., drug offenses).

The good news, as evidenced both by Sara Scoles’ article listing many offender reentry programs, and the introduction of the Second Chance Act, is that reentry programs are meeting with success and are gaining support.

At the same time there needs to be an effort to improve state anti-discrimination laws affecting ex-offender employment opportunities. Minnesota and Wisconsin have crafted reasonable laws that, above all other factors, encourage employment of ex-offenders who are rehabilitated or off supervision. These state legislative approaches, once expanded, will go a long way to complement other “Second Chance” strategies.

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STATISTICS ON PRISON AND JAIL INMATES

The Bureau of Justice Statistics
reported the following in its
Midyear 2005 Bulletin:

On June 30, 2005, there were 129
female prison and jail inmates per
100,000 women in the United States,
compared to 1,366 male prison and
jail inmates per 100,000 men. There
were also 64 women per 100,000 and
925 per 100,000 men serving a
sentence of a year or more.

At midyear 2005, 26,544 Federal
inmates were held at private
facilities.

From June 30, 2004 to June 30, 2005
the number of State and Federal
female inmates increased 3.4% while
the number of male prisoners
increased 1.3%. Men are still more
than 14 times more likely to be
incarcerated in a State or Federal
prison.

At midyear 2005, 35,285 Federal
inmates were noncitizens (~19.3%).

Admissions to the Federal prison
system increased 21.2% between
2000 and 2004 (from 43,732 to
52,982); releases increased 32.2%
(35,259 to 46,624). The number of

admissions to Federal prison in 2004 exceeded releases by more than 6,300 inmates.

Data available at
www.ojp.usdoj.gov/bjs.

SUPREME COURT ALLOWS PENNSYLVANIA SEGREGATION UNIT TO FORBID NEWSPAPERS, MAGAZINES, AND PHOTOGRAPHS

Nathan J. Kroes, Law Student, University of Wisconsin Law School

In a 6-2 decision,³ the U.S. Supreme Court in *Beard v. Banks*⁴ upheld a Pennsylvania prison policy forbidding certain inmates from having newspapers, magazines, and photographs.

Pennsylvania's Long Term Segregation Unit (LTSU) is "reserved for the Commonwealth's most incorrigible, recalcitrant

inmates.⁵" LTSU has two classification levels; level two is the most restrictive correctional setting in LTSU, and in the state. Ronald Banks, a level two inmate at LTSU, brought suit against the Secretary of the Pennsylvania Department of Corrections, Jeffrey Beard, alleging that the policy forbidding level two inmates access to newspapers, magazines, and photographs violated the First Amendment because it bore no reasonable relation to any legitimate penological objective. As Justice Stevens morosely points out in his dissent, "[w]hat is perhaps most troubling about the prison regulation at issue in this case is that the rule comes perilously close to a state-sponsored effort at mind control."⁶ Banks brings this suit requesting that each prisoner be allowed "*one* newspaper or magazine and some small number of photographs in their cells at one time."⁷

The Supreme Court determined that the District court had properly granted the government's motion for summary judgment in this case because, "the prison officials have

³ Justice Breyer wrote the majority opinion and was joined by the Chief Justice, and Justices Kennedy and Souter; Justice Thomas wrote a concurring opinion and was joined by Justice Scalia; Justice Stevens wrote a dissenting opinion and was joined by Justice Ginsburg; Justice Ginsburg also wrote a dissenting opinion; Justice Alito took no part in the decision.

⁴ *Beard v. Banks*, 548 U.S. ___, 2006 U.S. LEXIS 5176 (2006).

⁵ *Beard*, 2006 U.S. LEXIS at 10 (internal quotation marks and citation omitted).

⁶ *Id.* at 56 (Stevens, J., dissenting).

⁷ *Id.* at 42 (Stevens, J., dissenting) (emphasis in original) (internal quotation marks omitted) (citing *Beard v. Banks*, 399 F. 3d 134, 144 (3rd Cir. 2005) (case below)).

set forth adequate legal support for the policy... [and Banks] has failed to set forth 'specific facts' that, in light of the deference that courts must show to the prison officials, could warrant a determination in his favor.⁸"

Writing for the majority of the court, Justice Breyer explained that "imprisonment does not automatically deprive a prisoner of certain important constitutional protections, including those of the First Amendment... [but] the Constitution sometimes permits greater restriction of such rights in a prison than it would allow elsewhere."⁹ Furthermore, under *Turner v. Safley*,¹⁰ "restrictive prison regulations are permissible if they are 'reasonably related' to legitimate penological interests, and are not an 'exaggerated response' to such objectives."¹¹ In *Turner*, the Court laid out four factors affecting the reasonableness of a regulation.

First, is there a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it? Second, are there alternative means of exercising the

⁸ *Id.* at 9 (internal quotation marks and citation omitted).

⁹ *Id.* at 14-15 (citations omitted).

¹⁰ *Turner v. Safley*, 482 U.S. 78 (1987).

¹¹ *Beard*, 2006 U.S. LEXIS at 3 (citing *Turner*, 482 U.S. at 87).

right that remain open to prison inmates? Third, what impact will accommodation of the asserted constitutional right have on guards and other inmates, and on the allocation of prison resources generally? And, fourth, are ready alternatives for furthering the governmental interest available?¹²

Before delving into the Secretary's justification for the policy, Justice Breyer made clear that the Court "must draw all justifiable inferences in Banks' favor,"¹³ except that regarding disputed matters of professional judgment, it "must accord deference to the views of prison authorities."¹⁴

The Secretary's justifications for the prison's policy included: "the need to motivate better behavior on the part of particularly difficult prisoners, the need to minimize the amount of property they control in their cells, and the need to assure prison safety."¹⁵ The Court decided that the first justification alone was adequate and that summary judgment in the Secretary's favor was warranted. The Court explained that the *Turner* test was

¹² *Id.* at 15-16 (internal quotation marks and citation omitted).

¹³ *Id.* at 17 (internal quotation marks omitted) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)).

¹⁴ *Id.* (relying on *Overton v. Bazzetta*, 539 U.S. 126 (2003)).

¹⁵ *Id.*

not a balancing of factors, but rather the Court needed to determine whether “the Secretary shows more than simply a logical relation [between the policy and legitimate penological objectives], that is, whether he shows a *reasonable* relation.¹⁶” The Court held that the policy forbidding newspapers, magazines, and photographs was reasonably related to motivating better behavior from difficult inmates.

Justice Breyer does note that if there was evidence that a severe restriction was in fact permanent, then the Court “might well reach a different conclusion in a challenge to a particular application of the regulation.¹⁷” However, as Justice Stevens points out in his dissent, “[a]ny deprivation of something a prisoner desires gives him an added incentive to improve his behavior. This justification has no limiting principle; if sufficient, it would provide a ‘rational basis’ for any regulation that deprives a prisoner of a constitutional right so long as there is at least a theoretical possibility that the prisoner can regain the right at some future time by modifying his behavior.¹⁸”

¹⁶ *Id.* at 9-10 (emphasis in original).

¹⁷ *Id.* at 27 (internal quotation marks omitted) (citing *Overton v. Bazzetta*, 539 U.S. at 134).

¹⁸ *Id.* at 46 (Stevens, J., dissenting) (internal citation omitted).

SUPREME COURT REVIEW DENIED FOR GOOD TIME CREDIT CASES

Nathan J. Kroes, Law Student, University of Wisconsin Law School

In previous issues of *The Doing Time Times*, we have discussed calculating good time credit as provided for in 18 U.S.C. § 3624(b)(1),¹ and the problem with multiple interpretations of the phrase “term of imprisonment.” In Issue No. 6 we mentioned the favorable decision in *Moreland v. Fed. Bureau of Prisons*,² which held that the BOP’s interpretation violates plain meaning and conventional usage, the canon of statutory consistency, the venerable rule of leniety, and congressional intent as reflected in the legislative history.³ In this article we provide an update on that case and the U.S. Supreme Court’s handling of the definitional problem.

The *Moreland* case was appealed to the Fifth Circuit Court of Appeals

¹ 18 U.S.C. 3624(b) (1) states in relevant part: “[A] prisoner who is serving a term of imprisonment of more than 1 year other than a term of imprisonment for the duration of the prisoner’s life, may receive credit toward the service of the prisoner’s sentence, beyond the time served, of up to 54 days at the end of each year of the prisoner’s term of imprisonment.”

² *Moreland v. Fed. Bureau of Prisons*, 363 F. Supp. 2d 882 (D. Tex. 2005).

³ *Id.* at 894.

and was reversed.⁴ In its holding, the Fifth Circuit decided that the language in 18 U.S.C. § 3624(b) was not ambiguous and that good time is calculated at the end of each year served.⁵ Because the language was held to be non-ambiguous, the court did not address the rule of lenity⁶ or the *Chevron*⁷ test.⁸

In the consolidated *Moreland v. Federal Bureau of Prisons* and *O'Donald v. Johns*,⁹ the Supreme Court denied a writ of certiorari on the question of whether the phrase “term of imprisonment” in 18 U.S.C. § 3624(b) means “sentence

⁴ *Moreland v. Fed. Bureau of Prisons*, 431 F.3d 180 (5th Cir. 2005).

⁵ *Id.* at 182.

⁶ The rule of lenity is a tool used by courts to help interpret statutes and “ensures that the penal laws will be sufficiently clear, so that individuals do not accidentally run afoul of them and courts do not impose prohibitions greater than the legislature intended.”

Pacheco-Camacho v. Hood, 272 F.3d 1266, 1271 (9th Cir. 2001).

⁷ Under the *Chevron* test, the court must ask two questions: 1) has Congress directly spoken to the precise question at issue; and if the answer is no, 2) is the agency’s answer based on a permissible construction of the statute. If the answer to the first question is no, and the answer to the second question yes, then the court should give deference to the agency’s statutory interpretation. *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843-844 (1984).

⁸ *Moreland*, 431 F.3d at 182.

⁹ *Moreland v. Fed. Bureau of Prisons* and *O'Donald v. Johns*, 547 U.S. __ (2006). This order can be found at <http://www.supremecourtus.gov/opinions/05pdf/05-8268.pdf>.

imposed” or “time served.” Justice Stevens explains that the “fact that “10 Courts of Appeals have either agreed with, or deferred to, the Government’s interpretation provides a principled basis for denying these certiorari petitions. Nevertheless, I think it appropriate to emphasize that the Court’s action does not constitute a ruling on the merits and certainly does not represent an expression of any opinion concerning the wisdom of the Government’s position.”

More interestingly, in the denial Justice Stevens refers to Magistrate Judge Stephen Smith’s opinion in *Moreland v. Fed. Bureau of Prisons*¹⁰ when noting, “both the text and the history of the statute strongly suggest that it was not intended to alter the pre-existing approach of calculating good-time credit based on the sentence imposed.”¹¹

In the last paragraph of the decision, Justice Stevens seems to be writing especially for Congress when he remarks that “the question has sufficient importance to merit further study, not only by judges but by other Governmental officials as well.”¹² This comment is followed by a brief history lesson reminding

¹⁰ *Moreland*, 363 F. Supp. 2d at 894.

¹¹ *O'Donald*, 547 U.S. __.

¹² *Id.*

readers that in 1959 Congress stepped in to clarify that the language in the predecessor statute to § 3624(b) was referring to the sentence imposed.¹³

US BUREAU OF PRISONS CENTRALIZING DESIGNATION AND SENTENCE COMPUTATION

The federal Bureau of Prisons (BOP) has shifted all initial designation and sentence computation service from Community Corrections and Regional Offices to the following office:

Designation and Sentence
Computation Center
Grand Prairie Office Complex
U.S. Armed Forces Reserve Complex
346 Marine Forces Drive
Grand Prairie, Texas 75051
(972) 352-4200

Designation case management staff and sentence computation technicians are housed at this location, supervised by six designators and their respective assistants.

¹³ *Id.*

BOP REGULATIONS LIMITING RELEASE TO HALFWAY HOUSES TO 10% OF SENTENCE INVALIDATED IN 3rd AND 8th CIRCUITS

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The BOP is facing challenges to its newest policy regarding placement in Community Correction Centers (CCC). Under 28 C.F.R. § 570.20-21¹ (regulations), the BOP limits CCC placement to 10 percent of a prisoner's total sentence or six months, whichever is *less*, unless special statutory circumstances

¹ 28 C.F.R. § 570.20 states:

(a) This subpart provides the Bureau of Prisons' (Bureau) categorical exercise of discretion for designating inmates to community confinement. The Bureau designates inmates to community confinement only as part of pre-release custody and programming which will afford the prisoner a reasonable opportunity to adjust to and prepare for re-entry into the community.

(b) As discussed in this subpart, the term "community confinement" includes Community Corrections Centers (CCC) (also known as "halfway houses") and home confinement.

28 C.F.R. § 570.21 states:

(a) The Bureau will designate inmates to community confinement only as part of pre-release custody and programming, during the last ten percent of the prison sentence being served, not to exceed six months.

(b) We may exceed these time-frames only when specific Bureau programs allow greater periods of community confinement, as provided by separate statutory authority (for example, residential substance abuse treatment program (18 U.S.C. § 3621(e)(2)(A)), or shock incarceration program (18 U.S.C. § 4046(c)).

apply.² Shortly after these regulations became effective on February 14, 2005, challenges were mounted³ claiming that they are contrary to the BOP's governing statute, 18 U.S.C. § 3621(b),⁴ and §

² 28 C.F.R. § 570.21.

³ For a list of some of the district courts' decisions, see *Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235, n9, n10 (3rd Cir. 2005).

⁴ 18 U.S.C. § 3621 states in relevant parts: (b) Place of imprisonment. – The Bureau shall designate the place of the prisoner's imprisonment. The Bureau may designate any available penal or correctional facility that meets minimum standards of health and habitability established by the Bureau, whether maintained by the Federal Government or otherwise and whether within or without the judicial district in which the person was convicted, that the Bureau determines to be appropriate and suitable, considering—

- (1) the resources of the facility contemplated;
- (2) the nature and circumstances of the offense;
- (3) the history and characteristics of the prisoner;
- (4) any statement by the court that imposed the sentence—
 - (A) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or
 - (B) recommending a type of penal or correctional facility as appropriate; and
- (5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28.

In designating the place of imprisonment or making transfers under this subsection, there shall be no favoritism given to prisoners of high social or economic status. The Bureau may at any time, having regard for the same matters, direct the transfer of a prisoner from

3624,⁵ because they do not take into account the factors Congress listed for consideration. More specifically, by categorically denying CCC placement until 10 percent of the sentence remains, the regulations are not taking into account the nature and circumstances of the offense, the history and character of the prisoner, or statements by the court imposing the sentence.⁶ The fight has now entered the courts of appeals.

The first major blow to the BOP's new regulations came in *Woodall v. Fed. Bureau of Prisons*.⁷ In *Woodall*, the government argued that the use of "may" rather than "shall" in the second sentence of § 3621(b) made considering the factors optional, and

one penal or correctional facility to another. The Bureau shall make available appropriate substance abuse treatment for each prisoner the Bureau determines has a treatable condition of substance addiction or abuse.

⁵ 18 U.S.C. § 3624 states in relevant parts:

(c) Pre-release custody. – The Bureau of Prisons shall, to the extent practicable, assure that a prisoner serving a term of imprisonment spends a reasonable part, not to exceed six months, of the last 10 per centum of the term to be served under conditions that will afford the prisoner a reasonable opportunity to adjust to and prepare for the prisoner's re-entry into the community. The authority provided by this subsection may be used to place a prisoner in home confinement. The United States Probation System shall, to the extent practicable, offer assistance to a prisoner during such pre-release custody.

⁶ See 18 U.S.C. § 3621(b)(2)-(4).

⁷ *Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235 (3rd Cir. 2005).

that “the BOP appropriately exercised its sweeping authority.”⁸ The government further argued that the BOP’s interpretation of §§ 3621(b) and 3624 should be given deference under *Chevron*,⁹ and that the BOP’s regulations comport with the legislative history of the statutes. The court did not agree.

In the end the Third Circuit held that the new regulations were invalid because “the BOP may not categorically remove its ability to consider the explicit factors set forth by Congress in § 3621(b) for making placement and transfer determinations.”¹⁰ The court explained that, “[a] common-sense reading of the text - especially when combined with the legislative history - makes clear that the BOP is required to consider each factor. ‘May’ refers to the ability of the BOP to make ultimate placement designations, not to the § 3621 factors... Additionally, the use of

the word ‘and’ before the final factor in the five-part list indicates that Congress intended for the BOP to weigh all of the factors listed.”¹¹ The court notes that its reading “is bolstered by the statute’s legislative history, which states that the BOP is ‘specifically required’ to consider the § 3621(b) factors... before it can properly place or transfer an inmate.”¹² The court also decided that the regulations failed the first step of the *Chevron* test because it

¹¹ *Id.* at 245 (emphasis in original) (citation omitted).

¹² *Id.* (citing a Report of the Senate Judiciary Committee accompanying the enactment of § 3621 which states in relevant parts: “In determining the availability or suitability of the facility selected, the Bureau is *specifically required* to consider such factors as the resources of the facility considered, the nature and circumstances of the offense, the history and characteristics of the prisoner, the statements made by the sentencing court concerning the purposes for imprisonment in a particular case, any recommendations as to type of facility made by the court, and any pertinent policy statements issued by the sentencing commission pursuant to proposed 28 U.S.C. § 994(a)(2). *After considering these factors*, the Bureau of Prisons *may* designate the place of imprisonment in an appropriate type of facility, or may transfer the offender to another appropriate facility. The Committee, by listing factors for the Bureau to consider in determining the appropriateness or suitability of any available facility, does not intend to restrict or limit the Bureau in the exercise of its existing discretion so long as the facility meets the minimum standards of health and habitability of the Bureau, but intends simply to set forth the appropriate factors that the Bureau *should consider* in making the designations.” S. REP. NO. 98-225 (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3324-25 (emphasis added)).

⁸ *Id.* at 245.

⁹ *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843-844 (1984). Under the *Chevron* test, the court must ask two questions: 1) has Congress directly spoken to the precise question at issue; and if the answer is no, 2) is the agency’s answer based on a permissible construction of the statute. If the answer to the first question is no, and the answer to the second question yes, then the court should not “impose its own construction”, but rather give deference to the agency’s statutory interpretation.

¹⁰ *Woodall*, 432 F.3d at 244.

was clear what Congress intended, and even assuming *arguendo* that it was not clear, the regulations would fail the second step in the test because “they fail to take into account Congress’s indications that certain individualized factors... should be considered in the BOP’s placement and transfer scheme,” which is not a permissible construction of § 3621.¹³

Shortly after *Woodall*, the Eighth Circuit followed suit in a case named *Fults v. Sanders*.¹⁴ That court also held that the regulations’ categorical denial of transfers until 10 percent of the sentence imposed remains does not take into account the factors of § 3621 as required. The court cited, and used similar reasoning to that of the *Woodall* court. Writing for the court, Court of Appeals Judge Michael J. Melloy explains that, “[a] BOP decision to not transfer an inmate... requires the same consideration of the § 3621(b) factors as does the decision to transfer an inmate to a CCC. It is impossible for the BOP to consider all five factors on a categorical basis.”¹⁵

So far most district courts considering this issue have

followed these opinions. It will be interesting to see how much influence these two decisions will have.

BOP EMAIL PILOT PROJECT

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The Federal Bureau of Prisons has a new pilot program called Trust Fund Limited Inmate Communication System, or TRULINCS. This program allows inmates to send and receive electronic correspondence, and is funded through the Inmate Trust Fund rather than tax dollars. The Inmate Trust Fund receives money from commissary purchases, telephone services, and now through TRULINCS fees.

TRULINCS does not allow inmates access to the internet. Messages both from an inmate and to an inmate are monitored by correctional staff. Correspondence that may jeopardize the safety, security, or orderly operation of the correctional facility or the protection of the public, and messages that exceed 13,000 characters (approximately two pages) will be rejected. Attachments are not allowed and will not be sent to the inmate with the message.

¹³ *Woodall*, 432 F.3d at 248-49.

¹⁴ *Fults v. Sanders*, 442 F.3d 1088 (8th Cir. 2006).

¹⁵ *Id.* at 1092.

If someone would like to correspond with an inmate via TRULINCS, the inmate needs to apply to have that person added to his or her contact list. If the staff approves the request the system will send a message to that person's email address informing them that an inmate is requesting to electronically correspond with them. The message will allow the recipient to accept the request, reject the request and all future electronic correspondence from that inmate, or reject the request and all future electronic correspondence from any Federal inmate. The inmate will be notified of the response and correspondence can begin if the request is accepted.

TRULINCS is currently available at FCI Terminal Island, Terminal Island, CA; FCC Coleman, Low and Camp, Coleman, FL; FCI Danbury, Danbury, CT; FPC Montgomery, Montgomery, AL; FPC Alderson, Alderson, WV; FCC Victorville Camp, Victorville, CA; and USP Victorville, Victorville, CA. The program may be expanded to more institutions in the near future.

For more information go to www.inmatemessage.com.

UPDATE ON GOOD TIME, FEDERAL PAROLE AND INCREASED COMPASSIONATE RELEASE LEGISLATION

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In Issue No. 6 we told you about H.R. 3072, the bill introduced in the House of Representatives by U.S. Representative Danny K. Davis of Illinois to change good time, revive parole for Federal prisoners and amend Compassionate Release. This bill was referred to the House Committee on the Judiciary's subcommittee on Crime, Terrorism, and Homeland Security on August 23, 2005. The bill is still with the subcommittee and now has 12 co-sponsors, up from 8. The House of Representatives consists of 435 members and a majority of members voting is required for approval of a bill. A member of the House need not be a co-sponsor to vote for a bill. The full text of this bill can be obtained and tracked at <http://thomas.loc.gov>.

CONFRONTING CONFINEMENT, THE COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS REPORT

Nathan J. Kroes, Law Student, University of Wisconsin Law School

In early June of 2006 the Commission on Safety and Abuse in America's Prisons released a report entitled *Confronting Confinement*.

According to www.prisoncommission.org,

the report is about “violence and abuse in U.S. jails and prisons, the broad impact of those problems on public safety and public health, and how correctional facilities nationwide can become safer and more effective. The report reflects the Commission's work over more than a year — an inquiry that featured four public hearings in cities around the country where nearly 100 people testified, visits to jails and prisons, conversations with people about their experience of life behind bars, discussions with current and former corrections officials and experts working outside the profession, and a thorough review of available research and data.” Below is a summary of the Commission’s findings and recommendations.

Conditions of Confinement

The Commission made three findings on conditions of confinement. First, violence remains a serious problem in America’s prisons and jails. Second, we know which conditions in correctional facilities fuel violence and, therefore, how to prevent violence. Third, we need more reliable measures of violence behind bars than we have today. Based on these findings, the Commission recommended the

following for the prevention of violence in prisons:

1. Reduce crowding;
2. Promote productivity and rehabilitation;
3. Use objective classification and direct supervision;
4. Use force and non-lethal weaponry only as a last resort;
5. Employ surveillance technology; and
6. Support community and family bonds.

Healthcare in Prisons

The Commission made two findings in regards to healthcare in prisons. First, high rates of disease and illness among prisoners, coupled with inadequate funding for correctional health care, endanger prisoners, staff, and the public. Second, medical neglect and the spread of infectious disease are not inevitable; there are solutions to the health-care dilemmas facing corrections. The Commission made the following recommendations for healthcare that protects everyone:

1. Partner with health providers from the community;
2. Build real partnerships within facilities;

3. Commit to caring for persons with mental illness;
4. Screen, test, and treat for infectious disease;
5. End co-payments for medical care; and
6. Extend Medicaid and Medicare to eligible prisoners.

Use of Segregation Units

The Commission found that the increasing use of high-security segregation is counter-productive, often causing violence inside facilities and contributing to recidivism after release. It recommended as follows:

1. Make segregation a last resort and a more productive form of confinement, and stop releasing people directly from segregation to the streets;
2. End conditions of isolation; and
3. Protect mentally ill prisoners.

Labor and Leadership

The Commission found that better safety inside prisons and jails depends on changing the institutional culture, which cannot be accomplished without enhancing the corrections

profession at all levels. It recommended the following:

1. Promote a culture of mutual respect;
2. Recruit and retain a qualified corps of officers; and
3. Support today's leaders and cultivate the next generation.

Oversight and Accountability

The Commission noted two findings on oversight and accountability. The first was that most correctional facilities are surrounded by more than physical walls; they are walled off from external monitoring and public scrutiny to a degree inconsistent with the responsibility of public institutions. The second was that internal oversight and accountability is no less crucial than monitoring from the outside. We need to strengthen the mechanisms that exist and make more use of them.

The Commission made the following recommendations:

1. Demand independent oversight;
2. Build national non-governmental oversight;
3. Reinvigorate investigation and enforcement;

4. Increase access to the courts by reforming the Prisoner Litigation Reform Act;
5. Monitor practice not just policy;
6. Strengthen professional standards;
7. Develop meaningful internal complaint systems;
8. Encourage visits to facilities; and
9. Strive for transparency.

Knowledge and Data

The Commission found that uniform nationwide reporting on safety and abuse in correctional facilities is essential. It also found that incomplete and unreliable information currently hampers the ability of corrections leaders, legislators, and the public to make sound decisions about prisons and jails.

The Commission recommended the following:

1. Develop nationwide reporting;
2. Fund a national effort to learn how prisons and jails can make a larger contribution to public safety; and

3. Require correctional impact statements.

For more information, or to download the summary or the entire report, go to www.prisoncommission.org.

UPDATE ON GANG DETERRENCE AND COMMUNITY PROTECTION ACT OF 2005

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In Issue No. 6 we told you that the Gang Deterrence and Community Protection Act of 2005 (H.R. 1279) was approved by the House of Representatives. This bill is still in the Senate Committee on the Judiciary, where it has been since May of last year.

The full text of this bill can be obtained and tracked at <http://thomas.loc.gov>. For additional information also check Families Against Mandatory Minimums, www.famm.org, and The Sentencing Project, www.sentencingproject.org.

LIFE AFTER INCARCERATION: SUCCESSFULLY REENTERING SOCIETY

Sara J. Scoles, Law Student, Marquette University Law School

Prisoner reentry programs are becoming a growing commodity as

society realizes it is a lose-lose situation to simply dump prisoners back onto the streets when their sentences expire. Even a truly rehabilitated ex-convict can become a threat to himself or herself and to society if they are not given the knowledge, skills, resources, and support to live a law abiding life. Many former convicted offenders are still addicts upon their release, have significantly below average reading levels, poor family support systems and cannot find profitable employment upon their release. Without the help of successful reentry programs it is not a surprise that many ex-convicts end up back behind bars, which cost the taxpayers far more than the cost of implementing these reentry programs.

One of the first major prisoner reentry initiatives was Project Return, which began in Louisiana in 1993. This program focuses on prisoners with the highest risk of returning to prison and assists them in making successful transitions back into the community. According to Project Return's website, www.projectreturn.com: 1) during the first year after graduating from the program, when recidivism is normally at its highest, the program maintains an 89.3% success rate where only one in ten graduates commit a new

crime; 2) in year one the recidivism rate for graduates is 10.7%, only one third of a similarly situated non-graduate's at 37.2%; 3) during the second year of release, the failure rate for a prisoner who didn't partake in the program was over double that of graduates of the program, falling at 51% compared to the graduates 24.4%; and 4) while 40% of the program's participants originally committed a violent crime, only 6% of the graduates who did recidivate did so with violent crimes.

Project Return's success is attributable to its various program components. The program consists of either sixty or ninety days of training before the prisoner is released and additional community support after the release. Each participant is trained in weekly sessions of GED/academic coursework, addictions education, computer training, employable skills training, communication skills and finally community building. In addition to the valuable skill sets achieved through the program, each participant is paid a stipend of \$5 an hour during the training sessions which last for 37 hours a week. Therefore, if a prisoner is involved in the sixty-day program he or she will earn \$1,500, or \$2,250 for the ninety-day program, and is able to walk away from prison with enough

money to live honestly until further employment can be found.

Once the ex-prisoner is on the outside, Project Return has accumulated a network of private businesses that look for employment opportunities specifically for the program's graduates. Additionally, over 25 % of Project Return itself is run by ex-prisoner staff members.

While reentry programs have proven to be a great investment for inmates, they have also proven to be a great investment for taxpayers. According to www.projectreturn.com/index.php?name=results_and_impacts, and basing the numbers on Louisiana costs, in one year Project Return saved 38% of typical re-incarceration costs. A prisoner costs \$5,000 to be put through Project Return, \$100,000 to recidivate back to jail, and a recidivated prisoner costs approximately \$100,000 per year to crime victims. Therefore, the 25% of Project Return graduates who return to prison (450 prisoners) cost Louisiana \$92,250,000. However, the average recidivism rate of prisoners who have not gone through the program is 68% (1225 prisoners), which costs the state \$245,000,000; almost three times as much. So the time and money

required to successfully send prisoners through these reentry programs is more than a wise investment, it is the only choice that makes sense.

Another major reentry program is Project Greenlight, which operates within the Queensboro Correctional Facility in New York City. This program collects inmates from various correctional facilities across the state for eight to ten weeks before their release dates in order to devise a plan on how that individual will succeed on the outside. Each inmate is assigned a case manager and undergoes a risk and needs assessment evaluation before beginning classes. The various coursework in this program is similar to that of Project Reentry in that it focuses on cognitive skills, job readiness, family reintegration, substance abuse, practical life skills and establishing connections within the outside community for support. Additionally, those who admit substance abuse problems also take courses in relapse prevention.

However, Queensboro is currently only a male institution and so unfortunately females are unable to reap the benefits of this program.

While Project Return and Project Greenlight are two of the "poster examples" for reentry programs, every other state either already has

or is currently implementing some sort of prisoner reentry program with federal funding recently allocated among them. The following is a list of various programs offered in each state and the contact names and numbers for those programs:

Alabama

Alabama Reentry Program

Don H. Lee

(334)242-5820

Females ages 25-35 serving at Julia Tutuiler State Correctional Facility

Alaska

Alaska Dept. of Health and Social Services

Tony Newman

(907)465-1382

Juveniles

Arizona

Arizona Dept. of Juvenile Corrections

Emily Wetter

(502)324-0610

Juveniles

Arkansas

Arkansas Dept. of Corrections

Anita Sacrey

(501)683-2797

Offenders released in the Little Rock Area

California

Going Home Los Angeles Program

Kevin Wortell

(916)324-0962

Offenders released into Los Angeles

Community Ex-Offenders Program

Monika Hudson

(650)853-3100

Offender Supervision and Reentry

East Palo Alto, CA 94303

Free At Last

(650)462-6999

1796 Bay Road

East Palo Alto, CA 94303

freelast@best.com

Parolee Orientation Program

Bonnie Long Oliver

(916)255-2758

Regional Parole Demonstrator

Cal. Dept. of Corrections

Parole and Community Services

Sacramento, CA 95827

Resolve to Stop the Violence Project
Ramona Massey
(650)266-9337
Director, RSVP Program
San Francisco Sheriff's Dept.
425 7th Street
San Francisco, CA 94103

**Juvenile Reintegration and
Aftercare Center**
**Center for Delinquency and Crime
Policy Studies**
(916)278-6259
Cal-State University, Sacramento
7750 College Town Drive, Suite 104
Sacramento, CA 95826
Juveniles
Colorado
**Colorado Affirms Reentry Effort
(CARE)**
Steve Chorak
(719)226-4563

**Behavioral Intervention's Colorado
Reentry Program**
Jim Anderson
(800)241-2911
6400 Lookout Road
Boulder, CO 80301

Connecticut
Connecticut Reentry Project
Ellen Weber
(860)418-6888

Advanced Reentry Skills
Johanna Bond
(860)347-6924
393 Main Street
Middleton, CT 06457-3309
Delaware
Delaware Health and Social Service
Jack Kept
(302)255-9433
District of Columbia
**District of Columbia Reentry
Program**
Compton Douglas
(202)727-4036

Operation Total Life Change (TLC)
Valerie Boykin
(202)724-5071
Florida
**Florida Dept. of Corrections Reentry
Program**
Katherine Burns
(561)841-0222
**Offenders returning to Palm Beach
County**

Florida Dept. of Juvenile Justice
Julia Strange-Seale
(850)488-0370
Juveniles age 15-19 returning to Duval County

Juvenile Justice Program
Eckerd Juvenile Justice Services
(727)461-2990
P.O. Box 7450
100 N. Starcrest Drive
Clearwater, FL 33758

Juveniles
Georgia
Georgia Criminal Justice Coordinating Council
Eden Freeman
(404)559-4949

Savannah Impact Program
Keith Vermillion
(912)651-4360
Executive Director
144 Drayton Street
Savannah, GA 31401

Hawaii
Hawaii Reentry Project
Verdine Kong
(808)249-2990 ext. 2
Offenders released into Wailuku on Maui

Idaho
Idaho Dept. of Corrections and Juvenile Corrections
Thomas Hadlow
(208)658-2032
Offenders age 14-24

Illinois
Illinois Going Home Project
Richard Guzman
(630)584-0750 ext.2

Behavioral Intervention's Chicago Reentry Program
Jim Anderson
(800)241-2911
BI Reentry Program
Lookout Road
Boulder, CO 80301

Prison Action Committee
(773)874-7390
661 East 79th Street
Chicago, IL 60619

Southside Day Reporting Center
Thomas Hurley
(773)918-4680
1758 West 57th Street
Chicago, IL 60636

Indiana

**Indianapolis Violence Reduction
Partnership**

Jason D. Mutchens

(317)327-3131

**Marion County Justice Agency
200 E. Washington St., Suite 1901
Indianapolis, IN 46204**

Indiana's Juvenile Reentry Program

G. Roger Jarjoura

(317)261-3041

**Indiana University-Purdue
University Indianapolis**

342 N. Senate Avenue

Indianapolis, IN 46204

Iowa

Iowa Going Home Project

Anne H. Brown

(515)242-5729

**Offenders age 15-35 returning to
Polk County**

Kansas

Kansas Juvenile Justice Authority

Ted Martinez

(785)296-4213

Juvenile

Kansas Dept. of Corrections

Margie J. Phelps

(785)296-3128

Kentucky

Kentucky Dept. of Juvenile Justice

Libby Mills

(502)573-2738

Juveniles

Louisiana

**Corrections Organized for Reentry
(CORE)**

Suzanne Sharp

(225)342-6630

**Offenders from Dixon Correctional
Institute**

Project Return

Robert E. Roberts

(504)988-1000

2703 General de Gaulle Drive

New Orleans, LA 70114-6222

bob@projectreturn.com

Maine

Maine Reentry Network

Becky H. Boober

(207)287-1001

Maryland
RESTART (Reentry, Enforcement and Services Targeting Addiction, Rehabilitation and Treatment)

Dorothy Strawsburg
(410)585-3372

6776 Reisterstown Road Suite 210
Baltimore, MD 21215

Maryland Dept. of Public Safety
Reentry Program

Patricia Allen
(410)585-3303

Maryland Reentry Partnership Initiative

Joann Levy
(410)230-2283

Enterprise Foundation
312 N. Martin Luther King Jr. Blvd,
3rd floor
Baltimore, MD 21201

Massachusetts
Massachusetts Dept. of Corrections
Geralyn Riley
(508)422-3366
Offenders age 18-35

Massachusetts Dept. of Youth Services

Christine Hunt
(617)960-3281

Juveniles age 16-21 being released into Boston

Boston Reentry Initiative

Blake Norton
(617)343-4500

Boston Police Dept.
One Schroeder Plaza
Boston, MA 02120

Women in Transition

Kim O'Hara
(978)750-1900 ext.3721

Essex County Sheriff's Dept.
197 Elm Street
Salisbury, MA 01952

Michigan

Michigan Dept. of Corrections

Julie DeRose
(517)335-1388

Michigan Family Independence Agency

Jeanette Scroggins
(517)335-3541

Juveniles

Balanced Restorative Justice in Michigan

Marlyce Nuzum

(517)335-3490

Michigan Family Independence Agency

Bureau of Juvenile Justice

235 S. Grand, Suite 404

Lansing, MI 48909

Woman A.R.I.S.E.

Caron Jacobson

(313)331-1800

(313)331-8797

13100 Averhill Court

Detroit, MI 48215

Minnesota

**Minnesota Dept. of Corrections
Reentry Initiative**

David Ellis

(612)728-7507

Offenders age 16-34 from Hennepin County

Mississippi

Hinds County Dept. of Corrections

Christy Gutherz

(601)354-6996

Missouri

Missouri Dept. of Corrections

Julie Rollins

(573)522-1206

Montana

Montana Dept. of Corrections

Karen Duncan

(406)444-4390

Nebraska

Nebraska Dept. of Corrections

Brian Finn

(402)479-5697

Juveniles

Nevada

Nevada Dept. of Corrections

Dorothy Nash-Holmes

(775)887-3266

Nevada Dept. of Human Resources,

Division of Child and Family Services

Gerthie Polk

(702)486-5080

Juveniles

New Hampshire

New Hampshire Reentry Project

Larry Blaisdell

(603)271-5652

Offenders age 17-35 who were incarcerated at least 12 months and released into Manchester, or youth incarcerated at least 6 months released into Manchester or Belknap Counties

New Jersey
New Jersey Parole Board Reentry Project
David Wolfsgruber
(609)984-4609

Greater Newark Safer Cities Initiative
Mike Wagers
(973)353-3057
Rutgers University
123 Washington St.
Newark, NJ 07102

New Mexico
Safe Community Reentry Project
Sherry M. Helwig
(505)473-5005
New York
Harlem Accountability and Reentry Project (HARP)
David Aziz
(518)485-5307

Back to your Future
Sylvia Rowlands
(518)474-7886
Juveniles

Project Greenlight
Mary Ellen Flynn
(212)239-5727
NY State Division of Parole
314 West 40th Street
New York, NY 10018

Harlem Parole Reentry Court
Alfred Siegel
(212)373-1699
520 8th Avenue, 18th Floor
New York, NY 10018

Developing Justice in South Brooklyn
(718)857-2990
Developing Justice Program
141 5th Avenue
Brooklyn, NY 11217
[**fac@fifthave.org**](mailto:fac@fifthave.org)

Correctional Education Company
(716)871-1900
P.O. Box 956
Buffalo, NY 14207
prisonedu@aol.com

North Carolina
North Carolina Dept. of Corrections
Virginia Price
(919)716-3758

Restoration House Ministry
P.O. Box 3046
Monroe, NC 28111
www.Restorationhouses.org

North Dakota
North Dakota Dept. of Corrections
and Rehabilitation Reentry
Penny Blotsky
(701)328-6661

North Dakota Dept. of Corrections
and Rehabilitation
Division of Juvenile Services
Pamela Helbling
(701)667-1405
Juveniles

Ohio
Ohio Community-Oriented Reentry
Project (CORE)
Angela Lee
(740)852-2454
Best Practices Institute
P.O. Box 69
London, OH 43160

Community Correction for Ohio
Offenders
Community Reentry Center
(614)252-0660
993 E. Main Street
Columbus, OH 43205

Friends of Women's Reentry
Beverly Longrasso
(440)449-1200
2600 Lander Road
Pepper Pike, OH 44124
baljus@aol.com
Women offenders

Richland County Reentry Court
Dave Leitenberger
(419)774-5564
50 Park Avenue East
Mansfield, OH 44902
Oklahoma
Oklahoma Dept. of Corrections
Bill McCollum
(918)581-2002

Oklahoma Office of Juvenile Affairs
Mary Jo Sullivan
(405)530-2898
Juveniles age 12-20

Oregon
Transition Project
Tonya Ruscoe
(503)945-9053
Oregon Dept. of Corrections
Central Admin. Office
2575 Center St. NE
Salem, OR 97301
Pennsylvania
Pennsylvania Reentry Project
Angela Safer
(717)731-7149

Erie Pennsylvania Reentry Project
Jeffrey Beard
(717)975-4918
Penn. Dept. of Corrections
P.O. Box 598
Camp Hill, PA 17001

Rhode Island
Challenging Offenders to Maintain
Positive Associations and Social
Stability (COMPASS)
Theresa S. Foley
(401)462-1129
South Carolina
South Carolina Reentry Project
Wanda Tarpley
(803)896-7719

South Carolina Department of
Juvenile Justice
Howard Snider
(803)896-9235
Juveniles
South Dakota
Altshuler & Armstrong Intensive
Aftercare Program Jodi Heath
(605)367-5158
Juveniles ages 14-20 on supervised
release
Tennessee
Knoxville Public Safety
Collaborative
Lee Ragsdale
(865)215-1296
Knoxville Police Department
P.O. Box 3610
Knoxville, TN 37927

Chattanooga Endeavors
(423)266-1888
310 E. 8th Street
Chattanooga, TN 37404

Texas
San Antonio Fighting Back- Young
Offenders Reentry Coalition
Linda Tippins
(210)271-7232
2803 E. Commerce
San Antonio, TX 78203
Juveniles

Utah

Utah Dept. of Corrections Reentry Initiative

Belle Brough

(801)545-5707

Utah Dept. of Human Services

Division of Youth Correction

John LaCognata

(801)426-7444

Vermont

Vermont Dept. of Corrections

Reentry Project

John Perry

(802)241-2307

Felons age 16-35 incarcerated for at least 12 months

Vermont Restorative Reentry Partnerships

Paul Heath

(802)863-7450

Vermont Dept. of Corrections

50 Cherry St.

Burlington, VT 05401

Virginia

Virginia Dept. of Corrections

Reentry Project

R. Mario Woodard

(804)674-3557

Offenders under 35

Virgin Islands

U.S. Virgin Island Dept. of Justice

Sonia I. Maynard-Liburd

(340)773-0295

Washington

Washington State Dept. of Corrections

Candy Curl

(360)664-9490

Juvenile age 14-20 incarcerated at least 6 months or offenders 14-35 incarcerated at least 12 months

West Virginia

West Virginia Dept. of Corrections

of Reentry Project

Teresa McCourt-Cutlip

(304)558-2036

West Virginia Division of Juvenile Services

Deborah D. Gillespie

(304)558-6029

Wisconsin

Wisconsin Going Home Project

Kate Elvidge

(608)240-5937

Division of Juvenile Corrections

P.O. Box 8930

Madison, WI 53708

Juveniles age 14-25 returning to Milwaukee or Brown Counties

Wyoming
Wyoming Dept. of Corrections
Sam Borbely
(307)777-6301

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CONTACT US

If you wish to submit an article or suggestions for future newsletters, please write to us at:

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